January 13, 2003

## BY HAND

Ms. Kristi Izzo Secretary of the Board Board of Public Utilities 2 Gateway Center Newark, New Jersey 07102

Re: Petition Concerning The Applicability
Of The One Call Damage Prevention System
To The New Jersey Propane Gas Industry
BPU Dkt. No. G002100732

Dear Ms. Izzo:

On behalf of petitioner New Jersey Propane Gas
Association, please accept this letter brief and the accompanying certifications of Michael G. Merrill and Julie Tattoni, Esq., in support of the relief requested by way of Verified Petition, which we understand will be considered by the Board at its
January 23, 2003 public meeting. As you will note, Counts 1 and 2 in the Verified Petition seek a declaration that the One Call System should not apply to the propane gas industry; on those Counts, Petitioner relies upon the Verified Petition and, in particular, the exhibits attached thereto. As a result, this brief and the supporting certifications focus on Count 3 of the Verified Petition, which requests that the BPU implement measures

sufficient to comply with its statutory and regulatory obligations to insure administration of the One Call System on a site specific basis.

As demonstrated by the Certification of Michael G. Merrill ("Merrill Cert."), the implementation of the One Call System has been an administrative nightmare for the propane gas industry. Although the Legislature clearly signaled its intent that the One Call System was to operate on a site specific basis matching the specific sites where excavations are being undertaken with those companies that maintain underground facilities at the dig sites, this statutory mandate has been observed in the breach. Overall, 99% of all notices received by propane providers cover excavations at properties where they have no propane facility. This gross and systemic failure to honor the statutory mandate has placed an extraordinary financial and administrative burden on propane providers, who must investigate literally hundreds upon hundreds of false notices to find those few properly directed to them and who must pay thousands of dollars in fees for notifications covering sites where they have no facilities. It is for this reason that the Association, on behalf of its members, now asks the Board to take all necessary actions to ensure that the One Call System is implemented on a

site specific basis and that markout notices are issued to propane providers only when the street address of an excavation site matches the street address of a propane provider's customer.

To best appreciate the monumental failure of the One Call System in its dealings with the propane gas industry, it is helpful, first, to canvas the statutory and regulatory requirements detailing how the One Call System was intended to function and, then, to describe how the actual operation of the One Call System falls far short of these legal mandates.

## The Statutory And Regulatory Design Of The One Call System

The One Call System was established pursuant to the 1994 enactment of the Underground Facility Protection Act, N.J.S.A. 48:2-73 et seq. (the "Act"), which sought to prevent "damage to underground facilities caused by excavation[.]" N.J.S.A. 48:2-74. The statutory design for the One Call System is clear and simple: the One Call System is to learn from excavators the specific sites at which they intend to undertake activity and then to notify those who operate underground facilities at those dig sites so that they can mark out the location of their underground facilities.

To make sure that the One Call System would be an efficient and effective device to achieve the legislative

purpose, the Legislature directed that the One Call System must operate on a site specific basis. Specifically, the Act required that all excavators, when giving advance notice to the One Call System, must provide various key information, including the "specific site location...of the intended excavation[.]" N.J.S.A. 48:2-82(b)(4) (emphasis added). Upon receiving a notice from an excavator, the One Call System was required to list the notice on a register showing, among other things, "the site to which the notice pertains[.]" N.J.S.A. 48:2-76(b). The One Call System was then directed to promptly transmit "to the appropriate operators" information regarding the intended excavation. N.J.S.A. 48:2-76(c). Having received notice of an excavation on a property where it maintains an underground facility, the operator of the underground facility was statutorily required to mark, stake, locate or otherwise provide the position of its underground facility. N.J.S.A. 48:2-80.

These statutory protocols make clear that the One Call System was intended to operate on a site specific basis, matching dig sites to those responsible for underground facilities at the dig sites. Leaving no doubt as to its intent, the Legislature also specifically defined the term "site" to mean "the specific place where excavation work is performed or to be performed" and

directed that the dig site must "be identified by street address referenced to the nearest intersecting street and sub-division name, if available, as well as by lot and block number, if available and by kilometer or mile marker for railways[.]

N.J.S.A. 48:2-75 (definition of "site") (emphasis added).

Consistent with the statutory direction, the Board has consistently required that the Act be implemented on a site specific basis. Following the legislative mandate, the Board has defined the term "site" to refer to "the specific place where the excavation work is performed or to be performed" and has directed that each site be identified "by street address...as well as by lot and block number, if available[.]" N.J.A.C. 14:2-2.1 (definition of "site") (emphasis added). Likewise, the Board has directed that each excavator must provide the One Call System with the "specific site location...of the intended excavation[.]" N.J.A.C. 14:2-4.1(f)(4) (emphasis added).

The Board also issued a Request For Proposal ("RFP") seeking an entity to operate the One Call System and, in that process, established clear operating requirements designed to insure that the One Call System meets the statutory mandate to efficiently match dig sites with those responsible for underground facilities at the dig sites. The RFP clearly advised that

the successful bidder will be obliged to operate "consistent with the statutory responsibilities of the System Operator and subject to the oversight of the Board." Certification of Julie Tattoni ("Tattoni Cert."), Exhibit A at 1 (emphasis added). In addition to this general requirement, the RFP once again defined the term "site" as "the specific place where excavation work is performed or to be performed" and required that each site "be identified by street address...as well as by lot and block number, if available[.]" Id., Exhibit A at 4 (emphasis added). To ensure that proper and detailed information was received from each excavator, the RFP also required that the successful bidder obtain information specified in a Markout Request Form, which expressly included the "street address" of the dig location. Id., Exhibit A at 11, Attachment 1. Based on the information received from the excavator, the bidder was required to "accurately establish the location of the proposed excavation site" in two computer systems, i.e., in a street index system and in a database mapping system. Id., Exhibit A at 11.

Once the dig site had been accurately pinpointed, the successful bidder was required to notify all operators of underground facilities in the excavation area. <u>Ibid.</u> To perform this function, each operator of an underground facility was

required to provide the successful bidder with the area for which it desired to receive excavation notices. The RFP made clear that operators of underground facilities could provide the One Call System with either (1) "a list of municipalities for which they wish to receive notification," or (2) "an alphabetical street index, preferably with address ranges, for those areas in which they are to receive notification" or (3) "geographic information identifying the location of the area for which they desire to receive excavation notifications (tickets)[.]" Id., Exhibit A at 17. After matching the specific location of the dig site to the location of underground facilities provided by operators of those facilities, the successful bidder was required to be able to deliver information as to the location of the dig site to operators in two formats: (1) "in normal format (address number/street/nearest cross street, mile marker, etc.)" and (2) by way of "Latitude/Longitude, Global Positioning System (GPS), Geodetic Survey (USGS) or New Jersey State Plane System Coordinates[.]" Id., Exhibit A at 8.

The RFP requirements were formally incorporated into the scope of work in the ultimate contract between the Board and the successful bidder, One Call Systems, Inc. ("OCS"). <a href="Id.">Id.</a>, Exhibit B, Article 29 at 19. Moreover, in its response to the

RFP, OCS specifically agreed to "meet or exceed all performance standards as defined in the RFP." Id. Exhibit C, at 7.

Indeed, OCS's response to the RFP repeatedly promised to operate in the required manner. As a general matter, OCS touted that:

[W]e provide a system that meets the need of the individual one call center and its members.

OCS's proprietary call center management software includes all necessary programs to operate a state of the art one call center for utility notification. Flexibility in software design is an OCS standard. This allows us to customize features to your specifications and to upgrade the system as new needs are identified. [Id., Exhibit C at 17].

More specifically, as required by the RFP, OCS agreed to obtain the specific address of the dig site. See id., Exhibit C at 49 (directing customer service representatives to input the dig address for the work being done at a particular house or building). Likewise, OCS agreed to input the specific location of the dig site into its computer system (see id., Exhibit C at 57) and to issue markout tickets containing the street address of the dig site. Id., Exhibit C at 44. OCS promised that its proprietary, state of the art software "will allow New Jersey members [i.e., operators of underground facilities] to define the

area in which they wish to receive notices" (<u>id.</u>, Exhibit C at 18) and, thus, that "Only tickets that fall within a member's defined safety area polygon or geographic area shall be transmitted to the member." Id., Exhibit C at 22.1

In sum, the statute, the Board's implementing regulations, the RFP and OCS's response to the RFP, all define a series of requirements and protocols mandating that the One Call System operate on a site specific basis, matching specific places where excavation work is to be performed with those who maintain underground facilities at the identified dig sites. To the considerable detriment of the propane gas industry, there has been wholesale non-compliance with these statutory, regulatory and contractual requirements. The nature and extent of this operational failure is described below.

## The Wholesale Failure Of The One Call System

As designed, an operator of underground facilities is supposed to receive a markout ticket from OCS only when an excavator calls in a notice of intent to dig at a specific

 $<sup>^{1}</sup>$  OCS's Response to the RFP was incorporated in the subsequent contract between the Board and OCS. Tattoni Cert., Exhibit B, Article 21 at 12.

property where the company maintains an underground facility. For the propane gas industry, however, the One Call System consistently generates massive numbers of false alarms, <u>i.e.</u>, markout requests at locations where they maintain no underground facilities. This is not a situation where propane providers occasionally receive a false alarm; rather, it is a situation where propane providers occasionally receive a correct notice.

The statistics are staggering. Overall, one out of every 100 markout tickets issued to propane providers is for a location where they maintain an underground facility. Merrill Cert., para. 18. For example, in 2002, OCS issued 32,063 markout tickets to Suburban Propane Partners ("Suburban"), an Association member. Only 197 of these markout requests -- or a mere 0.6% -- were for locations where Suburban had customers. This 99.4% error rate means that only one out of every 200 markout tickets received by Suburban was properly issued. Id., para. 16.

This monumental error rate is mirrored throughout the industry and is experienced by company after company. For example, also in 2002, OCS issued a total of 19,131 markout tickets to H&H Propane, another Association member. Only 214 of these markout tickets -- or 1.1% -- covered locations where H&H had customers. Id., para. 17. The situation was no different for Eastern Propane, also an Association member. OCS issued

6,677 markout tickets to Eastern in 2002. Only 187 -- or 2.8% -- concerned locations where Eastern had customers. Ibid.

The constant receipt of markout tickets for properties where the propane companies do not have customers exacts a huge toll on Association members. Propane companies are overwhelmed by a blizzard of markout tickets and must carefully examine each to ascertain whether it is one of the few tickets which actually relates to one of its propane customers. In the case of Suburban, it must sort through an average of over 600 tickets per week. Likewise, H&H must sort through over 360 tickets per week. A smaller company like Eastern must carefully review more than 125 markout tickets in an average week. The resulting administrative burden is considerable, especially given the size of the businesses in the propane industry and the fact that these businesses function in a competitive business environment far different from that of public utilities. Id., para. 19.

In addition, because propane providers must pay \$.62 for each markout ticket received from OCS whether correctly issued or not, propane providers are paying 100 times more to OCS than they should because of the 99% error rate. Using Suburban as an example once again, Suburban should have received 197 markout requests in 2002 and paid fees of \$122.14 to OCS; however, it received 32,063 markout tickets which, at \$.62 per 70173584:1

ticket, represents a charge of \$19,879.06. Id., para. 20.

In an attempt to minimize some of the administrative burden, several Association members including Suburban have been forced to enter into supplemental contracts with OCS for ticket screening services. Under the terms of these contracts, OCS reviews the markout tickets issued to each company to determine whether the company has a propane facility at the designated dig site. For this service, OCS receives a fee of \$1.50 for each ticket it "clears". Ironically, the more erroneous tickets OCS issues to these companies, the more money the companies pay OCS. Id., para. 21.

The cost of this supplemental service can be substantial. For example, Suburban paid OCS \$44,536.50 under its supplemental contract during 2002 to clear inappropriate tickets. While Suburban was forced to pay this additional fee to OCS, Suburban was able to avoid the even larger burden involved in using its own staff to sort from among over 600 markout tickets received in an average week to identify the three or four properties actually serviced by Suburban. Id. para. 23.

The Association has attempted, with limited success, to understand the extraordinary number of false alarms that its members have received from OCS. Part of the problem appears to be that markout tickets are issued to propane providers <u>not</u> when 70173584:1

the street address of a dig site matches that of a member's customer, but when the dig site is in the same 1/8th mile square grid (and certain adjacent grids) as the customer's property.

Another potential contributor to the 99% error rate is that OCS issues tickets to propane companies for excavations that occur in the public right-of-way even though no propane facility may be located in a public right-of-way. Id., para. 24.

Whatever the cause, it is clear that these false alarms are a problem that can be avoided: OCS has the street addresses of both the dig sites and each propane company's customers and is capable of matching the two. Indeed, that is exactly one of the services performed by OCS under the supplemental contractual arrangement that it has entered with Suburban and others and for which the propane companies are forced to pay OCS an additional \$1.50 per ticket.

The grossly inefficient manner in which the One Call System issues markout tickets to propane companies fails to comply with the statutory and regulatory requirements to operate on a site specific basis and unfairly burdens the industry while creating no benefit for the public. In light of the 99% error rate in issuing markout tickets, the Association respectfully submits that there are unquestionably compelling grounds in support of its request that the One Call System be required to

issue markout tickets to propane providers only when the street address of an excavation site matches the street address of a propane provider's customer.

Respectfully submitted,

Ross A. Lewin For the Firm

RAL:mah